IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.978 OF 2001

IN

ARBITRATION PETITION NO.233 OF 1997

Mahesh and Co. ...Appellants

v/s

Indian Oil Corporation Ltd. ...Respondents

Mr N.M. Dastane for Appellants.

Mr B.H. Vyas for Respondents.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 11TH SEPTEMBER 2007.

P.C. :-

1. By this appeal, the appellants challenge the order dated 24th July 2001 passed by the learned Single Judge in arbitration petition No.233 of 1997. By that order, the learned Single Judge allowed the petition and set aside the award made by the Arbitrator. The award was made under the provisions of the Arbitration Act 1940. The reason that has been given by the learned Single Judge for setting aside the award is that the question whether the appellants have withdrawn their claim under coercion or duress, though specifically raised before the learned Arbitrator, has not been decided by the learned Arbitrator. The learned Single Judge has held that not deciding a question which was specifically raised amounts to misconduct on the part of the Arbitrator. We find that if a question which was specifically raised before the learned Arbitrator was left undetermined by the learned Arbitrator, the learned Single Judge, in exercise of the powers of the Court under section 16 of the Arbitration Act 1940 should have remitted the award back. In our opinion, therefore, the order of the learned Single Judge to the extent that it sets aside the award is liable to be set aside. In our opinion, following order would meet the ends of justice.

2. The appeal is allowed. The order of the learned Single Judge in so far as it sets aside the award is set aside. The award impugned before the learned Single Judge is remitted back to the learned Arbitrator to decide the question whether withdrawal of the claim by the appellants was under duress or coercion etc. as alleged by them ?. The learned Arbitrator, on determining that question, shall make a fresh award in accordance with law. Appeal is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)